WP(C) 5165/2003
BEFORE
THE HON’BLE SMT. JUSTICE A. HAZARIKA
Heard Mr. P.K. Tiwari and Mr. J. Purkayastha, learned counsel for the petitioner . Also heard Mr. M.K. Choudhury, learned Senior counsel assisted by Mr. M. Dutta appearing for Respondent Nos. 1, 2 and 3. None appeared for Respondent No.4

2. A writ of mandamus has been sought for directing the official re spondents to delete/strike off the name of private respondent from the notice da ted 15.3.2003 and also for a direction to adhere scrupulously the eligible crite ria laid down in the application and annexure enclosed there with for the purpos e of appointing Servo stockist for Tezpur area and to appoint the petitioner fi rm as Servo stockist for Tezpur area.

3. The facts leading and establishing in the present case is narrat ed herein below.

4. The petitioner M/s Tezpur Gas Agency is a partnership firm engag ed in the distribution of Indane (Liquefied Petroleum Gas) in Tezpur area under the authority of Indian Oil Corporation Ltd. (Marketing Division). It became a p artnership firm in February 2003 and prior to this since 1996 it was a proprieto rship firm managed and owned by its sole proprietor Ms. Bhanu Hazarika. At prese nt the partnership firm consists of two partners namely Ms. Bhanu Hazarika and S hri Spandan Hazarika.

5. On 12.3.2003 a memorandum of agreement was made between the IOC and the petitioner firm. On the strength of memornadum of agreement, the petitio ner firm is carrying out the distribution of Indane under the authority of India n Oil Corporation (IOC for short) (Marketing division) in the municipal limits o f Tezpur.

6. In the month of January, 2003, the IOC (Marketing division) by a news paper advertisement invited applications from the eligible persons/firms f or appointment of Servo stockists for lubricants in the specified areas of Assam . Among the areas specified, there was a location of Tezpur confined to Tezpur M unicipal area. 31.1.2003 was the last date of receipt of application. The applic ation form for Servo stockists contains various requirement, terms and condition s etc. The interview for Servo stockists was held on 15.3.2003. On that day itse lf a notice was issued by the IOC announcing the names of three applicants for a ppointment as Servo stockists in the Municipal limits of Tezpur. In order of mer it, the first name was that of Respondent No.4 and the name of the petitioner fi rm appeared at Sl. No.2.

7. It is alleged by the petitioner that unlike the petitioner, the Respondent No.4 did not fulfill most of the eligible criteria mentioned in the a dvertisement. However, in spite of non fulfilling the eligibility criteria or te rms and conditions as laid down in the application form, the name of Respondent No.4 appeared at Sl. No.1 of the Select list and thus being aggrieved by the act ion of the authority, the petitioner had approached this Court by filing the ins tant writ petition with the aforesaid prayer.

8. This Court vide order 9.7.2003 directed that the contract in que stion should not be finalized if the same has not been finalized in the meantime . Subsequently by various orders passed by this Court, the interim order passed on 9.7.2003 was allowed to be continued.

9. Mr. P.K. Tiwari, learned counsel for the petitioner has submitte d that in the mean time, Respondent No.4 has written to IOC a letter dated 8.5.2 006 expressing in writing his inability in running the stockistship and surrende red his Servo stockistship. On coming to know about the aforementioned developme

nt, the position of petitioner being at Sl. No.2, the petitioner wrote a letter to the IOC staking its claim for appointment as Servo stockist at Tezpur, in as much as his abandonment of Servo stockistship at Tezpur by Respondent No.4, the petitioner is the only person left in the list for appointment as Servo stockistship at Tezpur. But the same did not evoke any response from the authority. The petitioner therefore had filed an additional affidavit on 20.06.2006 in the instant writ petition incorporating the subsequent developments. Against the said additional affidavit, Respondent Nos. 1, 2 and 3 have filed an affidavit-in-opposition.

10. Mr. Tiwari has drawn my attention to Para 6 of the said affidavit-in-opposition filed by Respondent Nos. 1, 2 and 3, which is quoted herein below.

That with regard to the statements made in paragraph 8, the deponent states that in terms of this Hon'ble Court's order dated 9.7.2003, the execution of the agreement was kept pending. However, since its commissioning on 1.7.2003, the stokist was operating in the area assigned vide the appointment letter dated 23.6.2003. However, the selectee No.1 Sri Agarwal vide his letter DKA/TEZ/06-07 dated 8.5.2003 addressed to the General Manager of the Corporation has surrendered the stokistship that was awarded to him.

11. There is nothing on record to show on behalf of Respondent No.4 that the averments made in the aforesaid Para 6 of the affidavit-in-opposition filed by Respondent Nos. 1, 2 and 3 are not true.

12. That being the position the name of the petitioner now appears at Sl. No.1 in the impugned select list dated 15.3.2003.

13. However, Mr. M.K. Choudhury, learned Senior counsel appearing for Respondent Nos. 1, 2 and 3, referring to Para 7 of the affidavit-in-opposition submits that in terms of policy/guidelines followed by the Corporation, the panel of selected candidates remains valid for one year from the date of commissioning of the particular stokistship. In the present case, concerned panel of selected candidate was prepared on 15.3.2003 and the stockistship at Tezpur was commissioned on 1.7.2003. It is therefore, submitted that the panel was valid up to 30.6.2004 and on surrendering of the stokistship by selectee No.1 i.e. Respondent No.4, the validity of the said list expired on 30.6.2004 and thus prayed to allow the Corporation to make fresh advertisement.

14. Countering the submission made by Mr. Choudhury, Mr. Tiwari, learned counsel has submitted that the instant petition being filed during the validity period of the select list, claim of the petitioner cannot be defeated by taking the plea that panel has already been expired.

In support of his submission, Mr. Tiwari has placed reliance to the following decisions:

1. 2000 (3) SCC 699, State of U.P. vs- Ram Swarup Saroj,
2. 2001 (4) SCC 289, Vijay Kumar Sharma and others vs- Chairman, School Service Commission and others,
3. 2005 (4) GLT 684, O. Premkumar Singh and others vs- State of Manipur and others.

15. I have perused the decision so cited by Mr. Tiwari. The Apex Court in State of U.P. vs- Ram Swarup Saroj (supra) held that the claim of the candidate included in the panel cannot be defeated because currency of penal expired during the pendency of the litigation when the candidates had staked his claim during the currency of the panel.

In Vijay Kumar Sharma and others (supra) the Apex Court held that while the vacancies are existing, denial of appointment to the selected candidates and allowing the panel to lapse are unjustified.

In O. Premkumar Singh and others (supra), this Court held that petition filed during the validity period of the panel, claim of the petitioner cannot be defeate

d by the expiry of the panel as the claim was made during the currency of the pa nel.

16. In view of the law laid down by the Apex Court as well as this C ourt, in my considered opinion, the select list in the present case is still val id as on date. In as much as, instant writ petition has been filed during the cu rrency of the select list.

17. At this stage, Mr. Choudhury, learned counsel for IOC has submit ted that, even if the select list is found to be valid, right of the writ petiti oner will spring up only when it is held that the selection of respondent No.4 w as bad.
I am not satisfied with the plea raised by Mr. Choudhury in view of the fact tha t due to surrender of stockistship by respondent No.4, question of selection of Respondent No.4 has not been decided in this writ petition, more so, Respondent No.4 did not contest the writ petition challenging the claim of the writ petitio ner and this Court thus has not gone into the merit of the claim of the writ pet itioner and respondent No.4.

18. That being the position without considering the allegation and c ounter allegation made in the present case, I hold that the writ petitioner is e ntitled to be appointed as Servo stokist for the Tezpur area under the Responden t Nos. 1, 2 and 3 in view of his name appearing at Sl No.1 after surrendering th e same by Respondent No.4.

19. The writ petitioner may approach Respondent No.2 for necessary c ompliance of the terms and conditions of the agreement for Servo stockists conce rned on their part.
20. With the above observation, the writ petition stands allowed. Ho wever, considering the facts and circumstances of the case, there shall be no or der as to cost.